IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.936/97

SMT. KOMAL DEVI & OTHERS
V/S
STATE OF RAJASTHAN & OTHERS

DATE OF ORDER ::: 5th APRIL,2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri N.K. Maloo for petitioners.
Shri G.S. Gill, Additional Advocate General.

REPORTABLE

This is a writ of certiorari in which petitioners have assailed the validity of orders dated 24.12.96 and 21.1.97 passed by the Board of Revenue (for short "the Board"), order dated 21.12.76 passed by the Revenue Appellate Authority (for short "the Authority") and order dated 24.7.1976 passed by the S.D.O. (ceiling), Kota.

Factual matrix of the case is that one Jagannath, who was father of Mangi Lal and husband of Smt. Dhooli Bai died in Samvat 1988 (year 1931). A large chunk of agricultural land owned by him, was mutated in favour of his wife Smt. Dhooli Bai and son Shri Mangi Lal. Out of the lands entered in the name of Mangi Lal, 338 bighas and 12 bishwas land was mutated in the name of his sons Narendra Kumar and Surendra Kumar and 323 bighas and 15 bishwas land was mutated in favour of his wife Smt. Komal Devi on 30.3.1959. The said mutation was made prior to 1.4.1966 which is the prescribed date under the old ceiling law for commencement of the ceiling clause. The case of the petitioners is that this land having been ancestral, they inherited it from Jagannath. When notices under rule 14 of Rajasthan Tenancy (Fixation of Ceiling on

Agricultural Holdings) Rules, 1963, were served upon them, separate replies thereto were filed by Shri Mangi Lal, Surendra Kumar, Narender Kumar, Mahendra and Purshottam disclosing their separate Khatedaries maintaining therein that the land in their names was entered in separate Khatedari being ancestral and that Smt. Dhooli Bai expired on 30.8.1968. It was stated that the sons of Mangi Lal, even though minor, were not dependent on him. They were assessed independently under the Income Tax Act and Wealth Tax Act. Smt. Dhooli Bai – mother of Mangi Lal who was alive till much after the prescribed date i.e. on 1.4.1966 and had died on 30.8.1968, was also not dependent on him. An affidavit to this effect was submitted by Mangi Lal before the SDO. The SDO vide order dated 24.7.76 decided that the land measuring

438.07 standard acres was surplus. He allowed 5 members in the family and excluded land measuring 267.85 standard acres which had been utilised in construction of canal and part of which was transferred prior to 31.12.1969 and in respect of which separate mutations were opened in favour of transferees.

The petitioners filed an appeal against the said order of the SDO before the Authority. The Authority by its order dated 21.12.76 allowed the appeal in part modifying the order passed by the SDO and recognised eight family members instead of only five members and consequently allowing 46 standard acres of land to be retained. Surplus land was thus reduced from 438.07 standard acres to 423.07 standard acres. The Authority entertained cross objections filed on behalf of the petitioners which

were not filed within the period of limitation and without there being any authorisation from the competent authority in the Government. While allowing the cross objections the Authority directed that the question of exclusion of land measuring 267.85 standard acres part of which was said to have been transferred and some part of it was utilised in construction of canal, should be re-examined and with that direction the matter was remanded to the SDO. The petitioners filed revision petition before the Board against the order of the Authority which was dismissed by the Board vide its order dated 24.12.1996 and thereafter the review petition was also dismissed by the Board on 21.1.97. Hence, this writ petition.

I have heard Shri N.K. Maloo, learned counsel for the petitioners and Shri G.S.

Gill, learned Additional Advocate General for the respondent-State.

Shri N.K. Maloo, learned counsel for the petitioners argued that the orders passed by all the authorities below are liable to be set aside because they suffer from errors on the face of record and the findings recorded therein are just contrary to law. Both the Authority and the Board failed to correctly appreciate the definition of family given in section 30-B of the Rajasthan Tenancy Act (old ceiling law) according to which the widowed mother and children are not treated to be part of the family automatically but they are treated to be as part of the family only if they are dependent on the head of the family. Even as per the findings recorded by the SDO, Smt. Dhooli Bai was having 373.85 standard acres of land in her separate Khatedari

prior to enforcement of Rajasthan Tenancy Act. It cannot be therefore said that she was dependent on her son for the purpose of her maintenance. The authorities below were erred in law in clubbing the land of Smt. Dhooli Bai with that of Shri Mangi Lal and and not recognising her as a separate unit who was alive on the prescribed date i.e. 1.4.1966 and was entitled to be treated as separate unit in her own independent right. The SDO and the Authority have recorded wrong finding on this aspect of the matter by observing that she could not be treated a separate unit because she was not alive at the time of determination of dispute and in doing so they have ignored the basic law that the determination was to be made with reference to the prescribed date i.e. 1.4.1966 on which date Smt. Dhooli Bai was very much

alive. All the authorities below also committed a serious error of law in not applying the provisions of old ceiling law correctly whereby in case of ancestral property, a notional partition has to be made and share of a co-tenant has to be notionally arrived at. Since the petitioners No. 2 to 5 were co-tenant with their father in the land of their grand father late Shri Jagannath, their share ought to have been arrived at by notional partition. If so done, each one of them was entitled to 1/5th notional share as per rule 17(4) of the Old Ceiling Rules. Each one of them would be having 100 bighas of land in their share which was sufficient to maintain them. Therefore, it has been accepted that they were thus independent and were entitled to be treated as separate unit in their own right. It cannot be therefore said that they

were dependent on Mangi Lal as on the prescribed date i.e. 1.4.1966. In this connection, Shri N.K. Maloo relied on the judgment of Hon'ble Supreme Court in Balwant Singh & Another v/s Daulat Singh (dead) by L.Rs. & Others - AIR 1997 SC 2719 and this Court in Smt. Geeta Devi & Others v/s State of Rajasthan & Others 1979 WLC (UC) 19.

Shri N.K. Maloo, learned counsel for the petitioners further argued that the authorities below have confused the factum of dependency with the age of the petitioners. The dependency has got nothing to do with majority or minority. The authorities below proceeded on erroneous footing that since sons of Mangi Lal were minors, they would have to be treated as dependent on the family and their share clubbed with that of their father. The question of dependency was thus

not examined from the point of view that they were having sufficient land capable of giving them so much of income which was much more than their requirement. This militates against the findings recorded by the authorities below that they were dependent on the family. It was argued that even if they were minor, they can get their lands cultivated through others. Age was therefore not relevant consideration for deciding the question of dependency. Moreover, they were being independently assessed for income tax and wealth tax. The petitioners No.2 to 5 were therefore entitled to separate units. Shri N.K. Maloo, learned counsel for the petitioners in this connection cited judgments of this court in Hari Om & Anr. V/s State of Raj. & Ors RLR 2006(2) 329, Kanta Prasad v/s State of Raj. & Others 1982 RLR 36, Balram v/s State of

Raj. & Ors. 1999(1) 721, the judgment of Supreme Court in Manak Chand v/s State of Rajasthan and Ors – Civil Appeal No. 445/1983 decided on 30.1.1996, Jagan Nath v/s Authorised Officer and Others - S.B. Civil Writ Petition No.387/1976 decided on 9.11.1984, Ram Pratap & 3 others v/s State of Raj. & Ors. - 1988(2) RLR 520 and Jaganath v/s S.D.O. & others 1985 RLR 557.

Shri N.K. Maloo, learned counsel for the petitioners further argued that the Authority had erred in law in upsetting the finding of the SDO regarding the recognition of the transfers made in their favour. Such order was passed without application of mind and also even with regard to the land which was admittedly placed for construction of the canal acquired by the State. The Authority failed to appreciate that all the transfers were made prior to

1.12.1969, the date prescribed in this behalf, by registered sale-deed and their mutations were affected long back in favour of the transferees and possession handed over. The petitioners and Smt.Dhooli Bai were therefore not holding such land as on 1.4.1996. The Authority in this aspect committed an error of law in entertaining the cross examination which was filed belatedly and only under the signatures of the Government Advocate. Such cross examination neither had the signature of nor even authorisation from, the competent authority in the Government. The cross examination was therefore liable to be rejected. Even otherwise, the Rajasthan Tenancy Act does not provide for any remedy of cross examination which in any case could not have been allowed unless a definite finding about the correctness of

the view taken by the SDO was recorded and such view was reversed. The Authority has not given any reason for making the remand. It was therefore prayed that the order passed by the authorities below be set aside.

On the other hand, Shri G.S. Gill, learned Additional Advocate General representing the respondent-State opposed the writ petition and argued that the orders passed by the authorities below are perfectly legal and valid and do not suffer from any such legal infirmity which may warrant any interference by this court. He argued that mere mutation in the name of the wife and the sons of Mangi Lal during his life time would not make them Khatedar unless their names are entered in the Jamabandi. So far as the name of Komal Devi W/o Shri Mangi Lal is concerned, it is

submitted that under the Old Ceiling Law, the material date was 25.2.58 and admittedly no such entries existed on that date which was made on 30.3.59. It was argued that under the Old Ceiling Law the material date was 25.2.58 and not 1.4.56. He also denied that Narender Kumar and Surendra Kumar, both sons of Mangi Lal, were entered as Khatedars before the prescribed date i.e. 25.2.58. The land on that date was very much entered in the Khatedari of Smt. Dhooli Bai and Shri Mangi Lal. Arguments of the petitioners that each one of them should be treated as separate unit can not be explained just because they filed separate reply to the show cause notice given under rule 14 of the Old Ceiling Law. No document or any other evidence produced by them to prove death of Smt. Dhooli Bai on 30.8.68 nor was any independent assessment order

under the Income Tax Act and Wealth Tax Act of either Smt. Dhooli Bai or the minor sons of Mangi Lal was filed. This was required to be proved by leading independent evidence that in spite of being minors they were not dependent on the family and so was also required to be proved by Smt. Dhooli Bai that she was not dependent on the family. It was denied that the cross objection was filed by the Government-counsel without authorisation from the Government. Merely because the minor sons of Mangi Lal had notional shares in the land of their grand father would not prove the fact that they were not dependent on Mangi Lal. Similarly such assumption also cannot be made with regard to Smt. Dhooli Bai that she was not dependent on Mangi Lal. It was argued that under the Old Ceiling Law even on the notional partition, land of minor children,

who were dependent on their mother had to be clubbed as one unit. The authorities below have not committed any mistake in passing the impugned orders. Minors were not living separately and they were fully dependent on their father.

Learned Additional Advocate General argued that mere filing of affidavit by Mangi Lal would not dispense with the requirement of adducing evidence as proof and that additional affidavit by itself cannot be taken as a proof. Even though in para 7 of the affidavit, Mangi Lal stated that he would produce documentary and oral evidence of what was asserted by him but no proof of the facts stated therein was produced especially regarding what was stated in paras 5 and 6 to substantiate the assertions made in the affidavit. There being thus no proof of the fact that Smt.

Dhooli Bai and minor sons were no dependent on him, the authority and the SDO have not committed any such error of law which may constitute an error apparent on the face of record so as to call for interference by this court.

The learned Addl. Advocate General argued that SDO, Kota in his order noted that the power of attorney executed by Mangi Lal and Smt. Dhooli Bai on 20.1.1967 indicated that Mangi Lal declared her age as 33 years on that day according to which his sons Narendra Kumar, Mahendra Kumar, Purshotam and Surender Kumar cannot be accepted as major on 1.4.66. He also argued that the learned Authority in its order has categorically noted that no evidence whatsoever was produced by the petitioners before him about the fact that they were not dependent on the family.

I have given my thoughtful consideration to the arguments advanced by both the parties and perused the record.

Although the petitioners have challenged the orders passed by the Board both on their appeal as well as on review petition but they have also simultaneously challenged the order passed by the Authority rejecting their appeal and remanding the matter to SDO to the extent of validity of transfers of land made by them. Arguments which the petitioners have now raised before this court were substantially raised also before the Board. But when the Board failed to address itself to those questions, the petitioners filed a review petition seeking review of the order of the Board dated 24.12.96 whereby their revision petition was dismissed. Copy of the review petition has been placed on record. A

perusal of the review petition clearly shows that all those arguments which the petitioners have agitated now before this court were in fact raised therein including the arguments about the fact that neither the minor children of Mangi Lal nor his mother were dependent on him inasmuch as they have a share in the ancestral land owned by late Shri Jagannath titled of which devolved upon him on his death. They also raised an argument that the Authority could not entertain the cross objection of the Government filed much after the expiry of the period of limitation. The review petition although was again heard by the same Single Member of the Board but the order dated 21.1.1997 by which it was rejected hardly show any application of mind by the Board to any on this arguments raised. The review petition was dismissed by

just one and half page of order. The arguments which have been raised are such which requires an enquiry into certain facts at the end of the functionaries empowered under the Rajasthan Tenancy Act and/or the Land Revenue Act. Whether or not the widowed mother of Mangi Lal or his minor sons were dependent him or whether they had a share in the ancestral property are the questions which ought to be first considered by the Board. Regrettably however the order passed by the Board does not show any discussion or finding about, much less any application of mind to, any of these arguments. Many of the judgments which have been cited by the learned counsel for the petitioners including the Division Bench judgment of this court in Jugal Kishore & Ors v/s S.D.O., Baran & Ors – 1988(2) RLR 595 have also emphasised the

necessity of getting such questions first decided by the appropriate authorities in the Act itself and that case was remanded to the Authority. The Hon'ble Supreme Court also in Manak Chand's case, supra, cited by the learned counsel for the petitioners remanded the matter back to the Board because their Lordships held that the questions of dependency of the minor requires determination, therefore, the matter was remanded to the Board of Revenue to consider such plea and the legal consequence of the claimed minority status and non-dependent. Determination of such questions, in my considered view, ought to be first made by the Board because on perusal of the order passed by the Authority, I find that the arguments with regard to the minority status and non-dependent were in fact raised before the

Authority also which noticed them in para 6 of its judgment and yet decided the matter against the petitioner for the reason that the petitioners failed to produce any evidence to substantiate those arguments. In this context that when the petitioners challenged the order of the Authority in the revision petition before the Board, the Board was obliged in law to consider and decide the arguments raised by the petitioners assailing the validity of those findings. It ought to have examined whether the findings recorded by the Authority were perverse or well founded or in fact, there was no proof available on record showing that minor sons of Mangi Lal and her mother were not dependent on Mangi Lal or whether by virtue of their share in the ancestral property, they were liable to be treated as not dependent on

Mangi Lal and whether deceased Smt. Dhooli Bai was also not dependent on Mangi Lal. All these aspects ought to have been scrutinised by the Board to examine the correctness of the findings recorded by the Authority. In spite of the fact that the cited judgments are clear on the subject that even non-dependent minor or widowed mother was entitled to be treated as separate unit, the Board should first decide that question to find out whether the Authority has correctly decided the matter.

I therefore deem it appropriate to remand the matter to the Board for deciding the revision petition filed by the petitioners afresh in the light of the aforesaid reasons. Accordingly the orders passed by the Board are quashed and set aside and the revision petition filed by the petitioners

before the Board u/s 230 of the Rajasthan Tenancy Act against the judgment dated 21.12.1976 passed by the Authority is ordered to be restored to its original number with direction to the Board to decide it afresh in accordance with law.

The writ petition is accordingly allowed in terms of the aforesaid directions though with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/